

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.660 of 2018

Arising Out of PS. Case No.-11 Year-1992 Thana- SHIVSAGAR District- Rohtas

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{Against the Judgment of acquittal dated 07.04.2018 passed by the learned Additional Sessions Judge-III, Rohtas at Sasaram, in Sessions Trial No.436 of 1999}.

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Deo Shakhi Kuer alias Deo Shakhi Devi, W/o Late Bashist Tiwary, R/o Vill.- Avriya, P.S.- Shiv Sagar, District- Rohtas.

... .. Appellant.

Versus

1. The State of Bihar.
 2. Ram Chandra Tiwari, S/o Late Surju Tiwary.
 3. Jitendra Tiwary, S/o Harwansh Tiwary.
 4. Vanshidhar Pandey, S/o Late Ramadhar Pandey.
 5. Sreedhar Tiwary, S/o Late Ramashray Tiwary.
- All R/o Vill.- Auriya, P.S.- Shiv Sagar, District- Rohtas.

... .. Respondents.

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Appearance :

For the Appellant : Mr. Ajay Nandan Sahay, Advocate.
For the State : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 18-09-2018

Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission and I.A. No.1873 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure for grant of leave to file this appeal.

2. The petitioner in I.A. No.1873 of 2018 is the informant and the victim of Sheosagar P.S. Case No.11 of 1992 and,



therefore, she has locus standi to file this criminal appeal and, accordingly, she is permitted to file this criminal appeal.

3. In the aforesaid manner, I.A. No.1873 of 2018 stands disposed of.

4. The appellant has challenged the impugned Judgment of acquittal dated 07.04.2018 passed by the learned Additional Sessions Judge-III, Rohtas at Sasaram, in Sessions Trial No.436 of 1999, by which and whereunder he acquitted the respondents no.2 to 5 of the charges framed against them for the offences punishable under Sections 396 and 397 of the Indian Penal Code.

5. The perusal of the impugned Judgment goes to show that the ground of acquittal was failure of the prosecution to give the evidence to show the source of identification of the respondents no.2 to 5.

6. Learned counsel appearing for the appellant submits that the learned trial court committed error in acquitting the respondents no.2 to 5, particularly, in the circumstance, when the informant, her daughter as well as the brother of the deceased claimed to have identified the respondents no.2 to 5 committing dacoity. He further submits that, no doubt, one of the Investigating Officers could not be examined but non-examination of that Investigating Officer has not caused any prejudice to the respondents no.2 to 5 but, even then, the learned trial court acquitted the respondents no.2 to 5 on the ground of non-examination of one of the



Investigating Officers. He further submits that in course of trial, the informant as well as other eye witnesses claimed that the respondents no.2 to 5 participated in the crime and they not only looted the belongings of the house of the informant but also committed the murder of her husband.

7. On the other hand, learned Additional Public Prosecutor for the State supported the impugned Judgment of acquittal, submitting that there were several infirmities in the prosecution case as some of the prosecution witnesses claimed that at the time of the alleged dacoity, a Dhibri was burning in the room of the informant whereas some prosecution witnesses did not say anything regarding the burning of the Dhibri at the time of the alleged occurrence. He further submits that the learned trial court rightly gave the benefit of doubt to the respondents no.2 to 5, taking note of contradictions, occurred in the depositions of the prosecution witnesses and there is no need to interfere into the impugned Judgment of acquittal.

8. Having heard the rival contentions of both the parties, we went through the records.

9. We find that the house dacoity was committed and the informant being the inmate of that house claimed to have seen the respondents no.2 to 5, participating in the alleged dacoity. The informant further claims that her husband was dragged from the room and was killed by the dacoits. She further claims that at the



time of the alleged dacoity, a Dhibri was burning in the room and in the light of the aforesaid Dhibri, she identified the respondents no.2 to 5, who happens to be the co-villagers. Admittedly, there was previous enmity between the informant as well as respondents no.2 to 5. In course of trial, P.W.1, who happens to be the brother of the informant's husband claims that he had also seen the respondents no.2 to 5 committing dacoity and killing the informant's husband from another house in which he had hidden himself at the time of the alleged occurrence.

10. Admittedly, the Investigating Officer, who after institution of the case, inspected the place of the occurrence and recorded the statements of the prosecution witnesses, was not examined by the prosecution in course of trial. Therefore, non-examination of the Investigating Officer deprived the defence to put question to the Investigating Officer regarding the presence or recovery of the Dhibri in the room of the informant. It is a matter of common sense that in case of dacoity, if committed in dark night, source of identification plays an important role. The learned trial court has taken into consideration all the evidences produced on behalf of the prosecution in course of trial and came to the conclusion that the prosecution failed to prove beyond all shadows of reasonable doubts that the Dhibrti was burning in the room of the informant at the time of the alleged occurrence and, therefore, the claim of the informant as well as other so-called prosecution



witnesses regarding identification of the respondents no.2 to 5 became doubtful.

11. We carefully and cautiously perused the findings of the learned trial court and we do not find any perversity, illegality or infirmity in the impugned Judgment of acquittal and, therefore, we do agree with the submissions of the learned Additional Public Prosecutor that there is no need to interfere into the impugned Judgment of acquittal.

12. Accordingly, this appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
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